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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

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11 BOARD OF TRUSTEES OF THE SHEET METAL ) NO. C 07 3204 PJH  
12 WORKERS HEALTH CARE PLAN OF NORTHERN )  
13 CALIFORNIA, SHEET METAL WORKERS PENSION )  
TRUST OF NORTHERN CALIFORNIA, SHEET METAL )  
13 WORKERS LOCAL 104 VACATION, HOLIDAY ) COMPLAINT  
SAVINGS PLAN; ANTHONY ASHER, TRUSTEE, )  
14 )  
14 Plaintiffs, )  
15 )  
15 vs. )  
16 MTB INC, a California corporation )  
17 )  
18 Defendant. )  
19 )

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21 Plaintiffs complain of defendant and for a cause of action  
22 alleges that:

23 1. Jurisdiction of this Court is founded upon Section  
24 301 (c)(1) of the National Labor Relations Act of 1947 [29 U.S.C.  
25 §185(a)] and Section 502 of the Employee Retirement Income Security  
26 Act of 1974, said Act being hereinafter referred to as "ERISA" (29  
27 U.S.C. §1132), in that defendant has violated a collective  
28 bargaining agreement and certain Trust Agreements, thereby

COMPLAINT

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C:\WP DOCS\COMPLAINTS\SHEET METAL\VAGUE-KNOWN AMT-CORRECT PLNTF NAME-NEWEST LANGUAGE 104

1 violating the provisions of ERISA and the provisions of the  
2 National Labor Relations Act of 1947. This action is also brought  
3 pursuant to the Federal Declaratory Judgment Act (28 U.S.C. §2201  
4 et seq.) in a case of actual controversy between plaintiffs and  
5 defendant, and for a Judgment that defendant pay fringe benefit  
6 contributions in accordance with its contractual obligations.

7 2. Plaintiffs Boards of Trustees of the Trust Funds  
8 named in the caption (hereinafter "Trust Funds") are trustees of  
9 employee benefit plans within the meaning of §§3(1) and (3) and  
10 §502(d)(1) of ERISA, 29 U.S.C. §1002(1) and (3) and §1132(d)(1),  
11 and a multiemployer plan within the meaning of §§3(37) and 515 of  
12 ERISA, 29 U.S.C. §§1002(37) and §1145. Plaintiff Anthony Asher is  
13 a trustee. Said Trust Funds are authorized to maintain suit as  
14 independent legal entities under §502(d)(1) of ERISA, 29 U.S.C.  
15 §1132(d)(1).

16 3. Plaintiffs are informed and believe and thereupon  
17 allege that defendant, MTB, Inc., a California corporation,  
18 resides and does business in Penngrove, California. Performance  
19 of the obligations to pay fringe benefits set forth in the  
20 collective bargaining agreement is in this judicial district.  
21 ERISA specifically authorizes Trust Funds to bring this action in  
22 the district where the plans are administered, 29 U.S.C.  
23 §1132(e)(2); the plans are administered in the Northern District  
24 of California.

25 4. Each and every defendant herein is the agent of each  
26 and every other defendant herein. Defendants and each of them are  
27 engaged in commerce or in an industry affecting commerce.

28 5. At all times pertinent hereto, defendant was bound

**COMPLAINT**

1 by a written collective bargaining agreement with Sheet Metal  
2 Workers Local Union No. 104, a labor organization in an industry  
3 affecting commerce. The aforesaid agreement provide that defendant  
4 shall make contributions to the TRUST FUNDS, on behalf of  
5 defendant's employees on a regular basis on all hours worked, and  
6 that defendant shall be bound to and abide by all the provisions  
7 of the respective Trust Agreements and Declarations of Trust of  
8 said TRUST FUNDS (hereinafter the "Trust Agreements").

9       6. The Trust Funds rely upon a self reporting system.  
10 Defendant has unique knowledge of the amounts of contributions that  
11 it is liable to pay each month, and has a fiduciary obligation to  
12 accurately report the amount to the Trust Funds.

13       7. Defendant has breached both the provisions of the  
14 collective bargaining agreement and the Trust Agreements above  
15 referred to by failing to complete and send in monthly reports  
16 and/or to pay all moneys due thereunder on behalf of defendant's  
17 employees to the TRUST FUNDS. Said breach constitutes a violation  
18 of ERISA (29 U.S.C. 1002, et seq.) and of the National Labor  
19 Relations Act of 1947.

20       8. Pursuant to the terms of the collective bargaining  
21 agreement there is now due, owing and unpaid from defendant to the  
22 TRUST FUNDS on account number 358200/666 and 358201/666  
23 contributions for hours worked by covered employees for the months  
24 of May 2006, December 2006 and April 2007 and, liquidated damages  
25 and interest which are specifically provided for by said  
26 agreements. The total amount due is unknown at this time;  
27 additional monthly amounts will become due during the course of  
28 this litigation and in the interest of judicial economy, recovery

1 of said sums will be sought in this case. Interest is due and  
2 owing on all principal amounts due and unpaid at the legal rate  
3 from the dates on which the principal amounts due accrued.

4 9. Demand has been made upon said defendant, but  
5 defendant has failed and refused to pay the amounts due the TRUST  
6 FUNDS or any part thereof; and there is still due, owing and unpaid  
7 from defendant the amounts set forth in Paragraph 8 above.

8 10. An actual controversy exists between plaintiffs and  
9 defendant in that plaintiffs contend that plaintiffs are entitled  
10 to a timely monthly payment of trust fund contributions now and in  
11 the future pursuant to the collective bargaining agreement and the  
12 Trust Agreements, and defendant refuses to make such payments in  
13 a timely manner.

14 11. The Trust Funds do not at this time seek to audit the  
15 books and records of defendant. The only issue raised in this  
16 complaint is defendant's failure to complete and file voluntary  
17 monthly reports and pay the contributions due. The Trust Funds  
18 seek to obtain a judgment for any outstanding delinquent  
19 contributions based on defendant's reports and to reserve the right  
20 to audit defendant for this or any other unaudited period.

21 12. The Trust Agreements provide that, in the event suit  
22 is instituted to enforce payments due thereunder, the defendant  
23 shall pay court costs and reasonable attorneys' fee. It has been  
24 necessary for plaintiff to employ ERSKINE & TULLEY, A PROFESSIONAL  
25 CORPORATION, as attorneys to prosecute the within action, and  
26 reasonable attorneys' fee should be allowed by the Court on account  
27 of the employment by plaintiff of said attorneys.

28 WHEREFORE, plaintiffs pray:

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1           1. That the Court render a judgment on behalf of  
2 plaintiffs for all contributions due and owing to the date of  
3 judgment based upon unaudited reporting forms, plus liquidated  
4 damages provided for by the contract, interest at the legal rate,  
5 reasonable attorneys' fees incurred in prosecuting this action and  
6 costs.

7           2. That the Court enjoin the defendant from violating  
8 the terms of the collective bargaining agreements and the Trust  
9 Agreements for the full period for which defendant is contractually  
10 bound to file reports and pay contributions to the TRUST FUNDS.

11           3. That the Court reserve plaintiffs' contractual right  
12 to audit defendant for months prior to judgment, and in the event  
13 of such audit, collect any additional sums which may be due.

14           4. That the Court retain jurisdiction of this cause  
15 pending compliance with its orders.

16           5. For such other and further relief as the Court deems  
17 just and proper.

18 DATED: June 14, 2007

ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION

20           21 By: /s/ Michael J. Carroll  
Michael J. Carroll  
22           23 Attorneys for Plaintiffs

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**COMPLAINT**